

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WERNER STAHLLECKER
and BERTHOLD MUELLER

Appeal No. 2003-0488
Application No. 09/086,286

HEARD: July 16, 2003

Before ABRAMS, STAAB, and BAHR, Administrative Patent Judges.
STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-9 and 11-17, all the claims currently pending in the application.

Appellants' invention pertains to an apparatus for manufacturing a paper can from blanks of packing material. As explained on page 1 of the specification, the apparatus comprises

processing stations which are arranged one behind the other along a first star wheel and a second star wheel. The stations are rotatable in a cyclical motion and comprise holding devices for the blanks which can be fed to the processing stations one after the other to be put together and formed one by one. Material supply stations hold

Appeal No. 2003-0488
Application No. 09/086,286

ready packing material to be processed, and feeding devices feed the packing material to each star wheel.

A further understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the Appendix to appellants' brief.

The references relied upon by the examiner in the final rejection are:

Stahlecker et al. (Stahlecker)	5,135,462	Aug. 4, 1992
Konzal et al. (Konzal)	4,490,130	Dec. 25, 1984
Bader et al. (Bader)	4,842,681	Jun. 27, 1989

Claims 1, 2, 6, 8, 9 and 11-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Konzal in view of Stahlecker.

Claims 3-5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Konzal in view of Stahlecker and further in view of Bader.

Reference is made to appellants' brief (Paper No. 29) and to the examiner's answer (Paper No. 30) for the respective positions of appellants and the examiner regarding the merits of these rejections.

Discussion

Independent claim 1 is directed to an arrangement for manufacturing a paper container from blanks of material, comprising first and second transport wheels each mounted on a horizontally extending axis. Processing stations associated with the first transport wheel are configured to form a sleeve from a blank and assemble a lid to an end area of the sleeve. Processing stations of the

second transport wheel are configured to assemble a bottom to the sleeve. In addition, the transport wheel and the processing stations are

operatively arranged on one side of a vertically disposed central wall of a joint machine frame, and driving elements for the transport wheels are arranged on an exposed side of the vertically disposed central wall opposite from the one side on which the transports wheels and processing stations are disposed for easy accessibility.

In rejecting this claim as being unpatentable over Konzal in view of Stahlecker, the examiner has determined that Konzal does not disclose the first transport wheel 10 and the second transport wheel 23 mounted on a vertical support wall with the transport wheels each being mounted on a horizontally extending axis. The examiner takes the position, however, that it would have been obvious to arrange the transport wheels of Konzal “in a vertical orientation as taught by Stahlecker as a design choice arrangement” (answer, page 4). Implicit in the above, is that the machine of Konzal modified in the manner proposed by the examiner would result in an apparatus that corresponds in all respects to the subject matter of claim 1. For the reasons that follow, we cannot accept these positions.

First, we do not agree with the examiner that it would not have been obvious to arrange the transport wheels of Konzal “in a vertical orientation” (i.e., with the axes of the transports wheels extending in a horizontal direction) in view of Stahlecker. As noted by appellants on page 14 of the brief, the transport wheel 30 of Figure 8 of Stahlecker and the transport wheel 50 of Figure 9 of Stahlecker are not mounted to a common machine frame and are not even necessarily arranged

closely adjacent one another.¹ In our view, absent the use of impermissible hindsight, there is no teaching, suggestion or motivation in the applied prior art for a person of ordinary skill in the art at the time the invention was made to have reoriented the transport wheels of Konzal in the manner proposed by the examiner. Second, notwithstanding the examiner's view to the contrary, there is no clear teaching in either of the applied references of mounting a pair of transport wheels on one side of a common mounting wall with the driving elements for the wheels and their associated processing stations on an exposed opposite side of the common mounting wall for easy accessibility, as required by claim 1. In this regard, the partial vertical section view of the first transport wheel found in Figure 9 of Stahlecker does not suffice. Third, as noted by appellants on pages 14 and 16 of the brief, Konzal's machine forms cups with an open top, not a container having a lid and a bottom. Accordingly, neither of the transfer wheels of Konzal have stations that assemble a lid to the sleeve of the container, as required by claim 1. The examiner simply has not accounted for this difference in rejecting the appealed claim 1 as being unpatentable over Konzal in view of Stahlecker.²

¹In this regard, note that partially completed cans formed at the Figure 8 station are transported in the direction of arrow "D" to the Figure 9 station for completion by what appears to be a conveyor of some sort.

²We appreciate that Stahlecker's apparatus is for manufacturing a container having a lid and a bottom. The examiner is not understood as proposing to modify Konzal in light of this disclosure.

Appeal No. 2003-0488
Application No. 09/086,286

In light of the foregoing, we shall not sustain the standing rejection of claims 1, as well as claims 2, 6, 8, 9 and 11-17, that depend therefrom, as being unpatentable over Konzal in view of Stahlecker.

As to the standing rejection of claims dependent 3-5 and 7 as being unpatentable further in view of Bader, we have carefully considered the Bader reference additionally cited against these claims, but find nothing therein that makes up for the deficiencies of Konzal and Stahlecker noted above. Accordingly, we also shall not sustain the standing rejection of claims 3-5 and 7.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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Appeal No. 2003-0488
Application No. 09/086,286

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